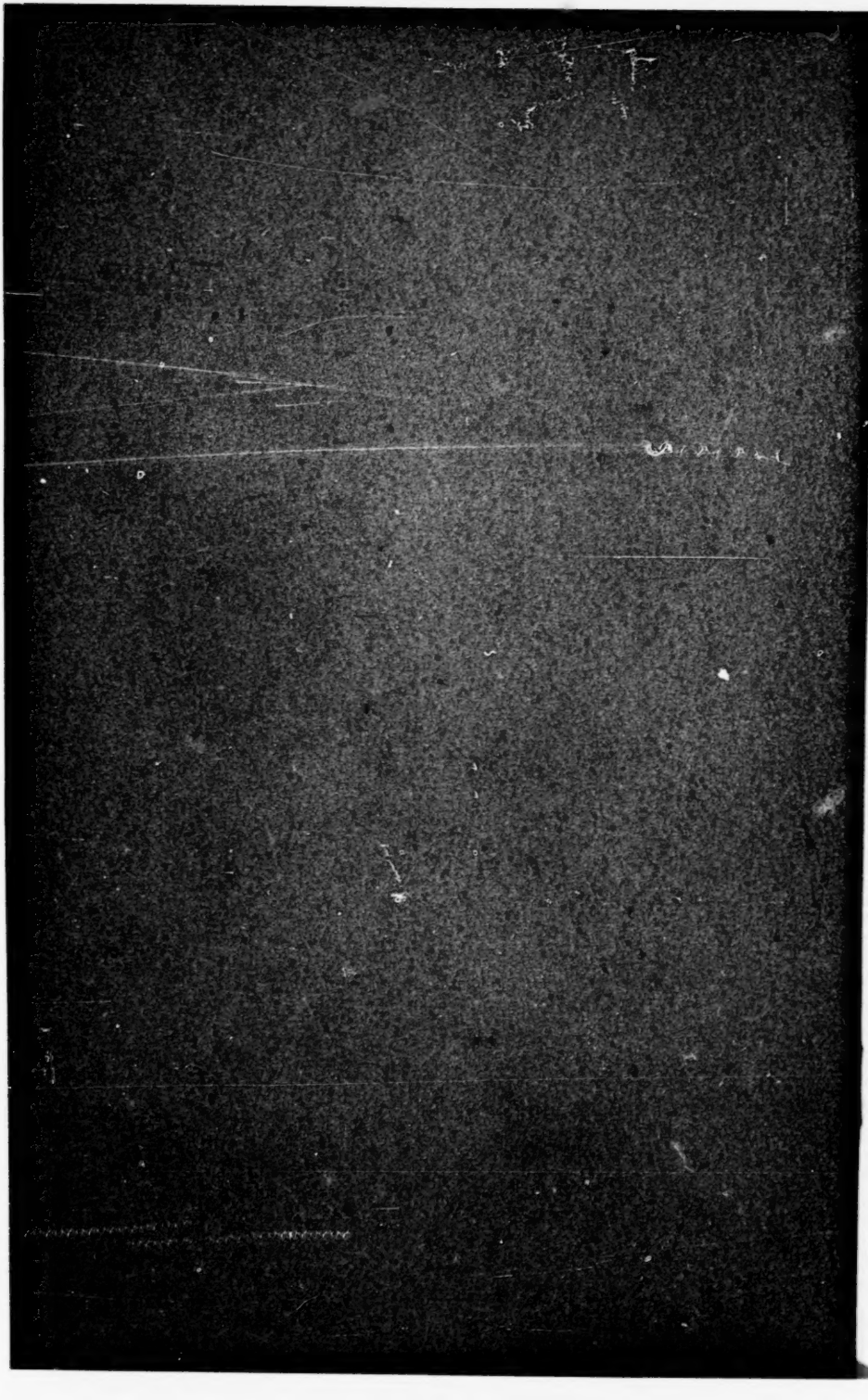

SUPREME COURT, U. S.
Supreme Court, U. S.
FILED
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MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-622

THE PEOPLE OF SAIPAN, by and through HERMAN Q. GUERRERO, LINO M. OLOPAI, DAVID T. ALDAN, JESUS A. SASAMOTO, JUSTIN S. MANGLONA, NICK SANTOS, BEN A. GUERRERO, JOHN ROSARIO, RICK R. MARCIANO, and JOAQUIN P. VILLAGOMEZ,
Petitioners,

vs.

UNITED STATES DEPARTMENT OF THE INTERIOR; ROGERS C. B. MORTON, Secretary of Interior; STANLEY S. CARPENTER, Director of the Office of Territories of the Department of the Interior; EDWARD E. JOHNSTON, High Commissioner of the Trust Territory of the Pacific Islands,
Respondents,

and

CONTINENTAL AIRLINES, INC., a Nevada Corporation,
Respondent.

Brief of Respondent Edward E. Johnston, High Commissioner of the Trust Territory of the Pacific Islands, In Opposition to Petition for a Writ of Certiorari

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CONTINENTAL AIRLINES, INC., a Nevada Corporation,
Respondent.

Brief of Respondent Edward E. Johnston, High Commissioner of the Trust Territory of the Pacific Islands, In Opposition to Petition for a Writ of Certiorari

QUESTIONS PRESENTED

1. Whether the National Environmental Policy Act should apply to actions taken by the Government of the Trust Territory of the Pacific Islands, in conformity with local laws but independently of the Secretary of the Interior.

2. Whether the federal courts should interfere with the judicial and political process of the Trust Territory of the Pacific Islands.

STATUTORY PROVISIONS INVOLVED

The National Environmental Policy Act, Subchapter I, 42 U.S.C. §§ 4321-4335 is set out in Appendix C at 50a of the Petition.

The Trusteeship Agreement (61 Stat. 3301), 48 U.S.C.A. § 1681(a), Executive Order No. 11021, and Department of the Interior Order No. 2918 are set out in Appendix D at, respectively, 55a, 61a, 61a, and 64a of the Petition.

48 U.S.C.A. § 1681a is set out in Appendix A at 1a of this Brief in Opposition. 1 T.T.C. § 101 is set out in Appendix B at 2a of this Brief in Opposition. The Trust Territory Environmental Quality Protection Act, 63 T.T.C. §§ 501-509, is set out in Appendix C at 3a of this Brief in Opposition. 61 Stat. 397 is set out in Appendix D at 11a of this Brief in Opposition. 6 T.T.C. § 357 is set out in Appendix E at 12a of this Brief in Opposition.

STATEMENT OF THE CASE

The petitioners herein are citizens of the Trust Territory of the Pacific Islands also known as Micronesians, and are residents of Saipan, Mariana Islands District. Respondents are the Department of the Interior of the United States; Roger C. B. Morton, Secretary of the Interior; Stanley S. Carpenter, Director of the Office of Territories of the Department of the Interior; Edward E. Johnston, High Commissioner of the Trust Territory of the Pacific Islands; and Continental Air Lines, Inc., a Nevada corporation.

The Trust Territory of the Pacific Islands, which includes Saipan, Mariana Islands District, is administered by the United States pursuant to a Trusteeship Agreement for

the Former Japanese Mandated Islands, between the Government of the United States and the Security Council of the United Nations (Petition, Appendix D, 55a).

Petitioners' contention is that execution of a lease of public land adjacent to Micro Beach, Saipan, Mariana Islands District, which was processed and approved by the High Commissioner pursuant to local law, was improperly found by the District Court of the District of Hawaii to be a local action not in violation of the National Environmental Policy Act (Petition, Appendix A, 1a-27a).

Petitioners further contend that the execution of said lease to a foreign corporation was a violation of the Trusteeship Agreement.

REASONS FOR DENYING THE WRIT

1. Federal Courts Should Not Apply the National Environmental Policy Act to the Actions of the Government of the Trust Territory of the Pacific Islands, or Those of the High Commissioner When Taken in His Capacity as Chief Executive Thereof Pursuant to Local Laws.

The National Environmental Policy Act applies by its terms to ". . . agencies of the Federal Government . . ." 42 U.S.C.A. § 4332 (Petition, Appendix C, 51a-53a).

The United States of America is merely designated as the Administering Authority under and pursuant to the Trusteeship Agreement for the Former Japanese Mandated Islands. Art. 2 (Petition, Appendix D, 56a). Because the Trust Territory is neither a possession nor a territory of the United States, *a fortiori*, it is not a federal agency. The High Commissioner, who is appointed by the President, is the chief executive officer of the Trust Territory. 48 U.S.C.A. § 1681a (Appendix A, 1a); Part II, § 1, Department of the Interior Order No. 2918 (Petition, Appendix D, 65a). A basically republican form of government has been created

in the Trust Territory of the Pacific Islands with executive, legislative and judicial branches. Parts II, III and IV, Department of the Interior Order No. 2918 (Petition, Appendix D, 65a-77a). It is true that the Secretary of the Interior does have responsibility for administration of the Trust Territory. Executive Order No. 11021 (Petition, Appendix D, 62a-63a); see 48 U.S.C.A. § 1681(a) (Petition, Appendix D, 61a). However, the existence, purpose and functioning of the Congress of Micronesia, elected by the citizens, cannot be ignored.

The Trusteeship Agreement, in giving full powers of administration, legislation and jurisdiction, states that the United States

> ". . . may apply to the Trust Territory, subject to any modifications which the administering authority may consider desirable such laws of the United States as it may deem appropriate to local conditions and requirements." Art. 3 (Petition, Appendix D, 56a).

On this question of applicability of United States laws to the Trust Territory,

> "*Additional laws applicable to Trust Territory.* The following are declared to be in full force and to have the effect of law in the Trust Territory of the Pacific Islands:
>
> (1) the Trusteeship Agreement;
>
> (2) such laws of the United States, as shall, by their own force, be in effect in the Trust Territory, including the Executive Orders of the President and orders of the Secretary of the Interior; . . ." 1 T.T.C. § 101 (Appendix B, 2a).

It is our contention that the phrase "by their own force" means that the Trust Territory of the Pacific Islands must be specifically stated in such United States laws in order for them to apply to the Trust Territory. In other words,

when a given federal statute, such as the National Environmental Policy Act, fails to specifically mention the Trust Territory of the Pacific Islands, by name, within its coverage, then the courts must not extend the coverage of such federal statute by reading into it a non-expressed intent of the lawmakers. By its own terms, the Trusteeship Agreement *does not require the United States to apply its laws* to the Trust Territory. Article 3 of the Trusteeship Agreement merely gives the United States discretionary power to apply its laws to the Trust Territory. Furthermore, the phrase "subject to any modifications which the administering authority may consider desirable such laws of the United States as it may deem appropriate to local conditions and requirements" clearly indicates that the United States in applying any of its laws to the Trust Territory may modify that particular law to effectively deal with such local conditions and requirements. In other words, the United States is not required by the Trusteeship Agreement to extend its laws *in toto* or at all to the Trust Territory. Given these broad discretionary powers, the United States must, therefore, make its intention to apply a particular law to the Trust Territory of the Pacific Islands abundantly clear.

This requirement of clearly manifested intent is inherent in the authority and increasing role of the Congress of Micronesia in the legislative process. The terms of the Trusteeship Agreement and the voluntary action of the Administering Authority in delegating its legislative authority to the Congress of Micronesia appear to preclude courts from extending a particular federal statute, such as the National Environmental Policy Act, to the Trust Territory of the Pacific Islands in the absence of a specific reference to the Trust Territory. This is particularly true

in this case because the Congress of Micronesia has since enacted a law to protect the environment. 63 T.T.C. § 501-509 (Appendix C, 3a-10a).

2. The Court of Appeals, in Reaching Its Decision Has Maintained the Proper Balance Between Individual Rights and the Promotion of Self-Government for Micronesia (Petition, Appendix B, 28a-49a).

Article 6 of the Trusteeship Agreement requires the administering authority not only to ". . . protect the inhabitants against the loss of their land and resources . . ." but also to ". . . foster the development of such political institutions as are suited to the trust territory and shall promote the development of the inhabitants of the trust territory toward self-government as may be appropriate . . .". Article 6 (Petition, Appendix D, 57a-58a). The obligation for political development of Micronesia started when the Trusteeship came into force upon its approval by the President on July 18, 1947, pursuant to the authority of a joint resolution of Congress of the same date. 61 Stat. 397 (Appendix D, 11a).

Throughout this period, the people of Micronesia have accepted and learned to live with the provisions of the Trust Territory Code which states that "Unless and until the Congress of the United States provides for an appeal to a court created by Act of Congress, the decisions of the Appellate Division of the High Court shall be final." 6 T.T.C. § 357 (Appendix E, 12a). Although the people of the Trust Territory would probably want to have a right to appeal cases to this court because of the great respect for this court held by Micronesians in general, the fact that decisions of the Appellate Division of the High Court are final has given the High Court the same degree of respect and stature given to "courts of last resort."

The United States Government, through its representatives, and the Congress of Micronesia, through its Joint Committee on Future Status, have for several years now, been conducting negotiations for a future political status of the Trust Territory of the Pacific Islands. Viewed in the light of the Proposal of the Joint Committee on Future Status of the Congress of Micronesia dated July 12, 1974, for a "Compact Between the People of Micronesia and the United States of America", there is contemplated a future government of Micronesia having full responsibility for and authority over all matters which relate to the internal affairs of Micronesia. (Appendix F, 13a-38a).

The decision of the Court of Appeals has maintained the delicate balance between individual rights and promotion of Micronesian self-government. In effect that decision has maintained the integrity and respect for the High Court of the Trust Territory which, given on-going status negotiations, will be again a "court of last resort" for Micronesians.

CONCLUSIONS

Based on the foregoing grounds, the judgment and opinion of the Court of Appeals for the Ninth Circuit should be allowed to stand, and a writ of certiorari should not issue.

Respectfully submitted,

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(Appendix Follows)

Appendix A

48 U.S.C. § 1681a.

Any appointment made on or after May 10, 1967 to the office of the High Commissioner of the Trust Territory of the Pacific Islands shall be made by the President by and with the advice and consent of the Senate.

Appendix B

1 T.T.C. § 101.

The following are declared to be in full force and to have the effect of law in the Trust Territory of the Pacific Islands:

(1) the Trusteeship Agreement;

(2) such laws of the United States, as shall, by their own force, be in effect in the Trust Territory, including the Executive Orders of the President and orders of the Secretary of the Interior;

(3) laws of the Trust Territory and amendments thereto;

(4) District Orders heretofore promulgated by the District Administrators of the Trust Territory and Emergency District Orders promulgated by the District Administrators in accordance with Section 108 of this Chapter;

(5) the acts of legislative bodies convened under charter from the High Commissioner when these acts are approved by the High Commissioner or otherwise become law as may be provided by charter or the laws and regulations of the Trust Territory; and.

(6) duly enacted Municipal Ordinances.

Appendix C

Environmental Quality Protection Act

(63 T.T.C. §§ 501-509)

§ 501. Short title. This Subchapter may be cited as the "Trust Territory Environmental Quality Protection Act."

§ 502. Public policy. The people of the Trust Territory of the Pacific Islands are dependent upon the air, land, and water resources of the islands for public and private water supply, for agricultural, industrial, recreational uses, and as a basis for tourism. Therefore, it is declared to be the public policy of the Trust Territory of the Pacific Islands, and the purpose of this Subchapter to achieve and maintain such levels of air, land and water quality as will protect human health, welfare and safety and to the greatest degree practicable prevent injury to plant and animal life and property, as will foster the comfort and convenience of its people and their enjoyment of health, life and property and will promote the economic and social development of the Trust Territory of the Pacific Islands and facilitate enjoyment of its attractions.

§ 503. Definitions. The following words, for the purposes of this Subchapter, shall have the following meanings:

(1) "Director of Health Services" shall mean the Director personally or his duly authorized representative.

(2) "Pollutant" means one or more substances or forms of energy which when present in the air, land or water, are or may be harmful or injurious to human health, welfare or safety, to animal or plant life, or to property, or which unreasonably interfere with the enjoyment by the people of life or property.

(3) "Person" means the Trust Territory of the Pacific Islands, a district, municipality, political subdivision, a

public or private institution, corporation, partnership, joint venture, association, firm, or company organized or existing under the laws of the Trust Territory of the Pacific Islands or any state or country, lessee or other occupant of property, or individual, acting singly or as a group.

(4) "Board" means the Trust Territory Environmental Protection Board.

§ 504. Trust Territory Environmental Protection Board created: membership; terms; vacancies; chairman; qualifications; compensation; cooperation of other agencies; meeting of board; quorum; secretary.

(1) There is hereby established in the Office of the High Commissioner a board to be known as the Trust Territory Environmental Protection Board to be composed of nine members as follows: The Director of Health Services, Director of Public Works, Director of Resources and Development, and six citizens of the Trust Territory of the Pacific Islands, to be appointed by the High Commissioner with the advice and consent of the Congress of Micronesia: PROVIDED, that such appointments shall include one representative from each of the six administrative districts. The initial appointments of appointed members shall be made as follows: two for a period of one year; two for a period of two years; and two for a period of three years. Successors to the first appointees hereunder shall be appointed for terms of three years each. Vacancies other than by expiration of term shall be filled by the High Commissioner by appointment, in the same manner as the original appointment was made, for the unexpired term. The Chairman shall be the Director of Health Services.

(2) The High Commissioner in his appointments shall select persons who are citizens and residents of the Trust Territory of the Pacific Islands for their ability, and all

appointments shall be of such nature as to aid the work of the Board to inspire the highest degree of cooperation and confidence in carrying out the policy and purpose of this Subchapter.

(3) Members of the Board shall serve without compensation as such, but shall be entitled to receive travel costs and per diem at standard Trust Territory rates when engaged in the performance of the duties of the Board. Any employee of the Trust Territory Government shall be granted leave with pay while engaged in the performance of the duties of the Board.

(4) The Board may call upon any Trust Territory department or agency for technical assistance. All departments or agencies of the Trust Territory shall, upon request, assist the Board in the performance of its duties.

(5) The Board shall meet at least once every three months. Meetings may be held at any time or place to be determined by the Board upon the call of the chairman or upon written request of any three members. All meetings shall be open to the public, and public notice of the time and place of such meetings shall be posted in public places and shall be announced on the radio throughout the Trust Territory.

(6) Five members of the Board shall constitute a quorum for the transaction of business.

(7) The Board shall designate a secretary who shall keep all records of, and actions taken by, the Board. These records shall be open to the public for public inspection.

(8) The Attorney General shall, upon request of the Chairman, act as legal advisor to the Board.

(9) The Board shall designate a full-time salaried executive officer who shall administer the functions of the Board

and shall have such duties and responsibilities as may be delegated to him by the Board.

(10) The Board shall submit to the High Commissioner and to the Congress of Micronesia, not later than September 1 of each year, a Report detailing its activities during the previous fiscal year.

§ 505. Powers and duties of the Board. The Board shall have the power and duty to control and prohibit pollution of air, land, and water in accordance with the law and regulations adopted and promulgated by it, and for this purpose is authorized and empowered to:

(1) Adopt, approve, amend, revise, promulgate, and repeal regulations, in the manner which is or may be provided by law, to effect the purposes of this Subchapter, and enforce such regulations which shall have the force and effect of law.

(2) Accept appropriations, loans, and grants from the United States Government or any agency thereof and other sources, public or private, which loans, grants and appropriations shall not be expended for other than the purposes of this Subchapter.

(3) Adopt and provide for the continuing administration of a Trust Territory-wide program for the prevention, control, and abatement of pollution of the air, land and waters of the Trust Territory, and from time to time review and modify such program as necessary.

(4) Establish criteria for classifying air, land, and waters in accordance with present and future uses.

(5) Establish and provide for the continuing administration of a permit system whereby a permit shall be required for the discharge by any person of any pollutant in the air, land or water, or for the conduct by any person of any activity, including but not limited to the operation,

construction, expansion or alteration of any installation, which results in or may result in the discharge of any pollutant in the air, land or water; provide for the issuance, modification, suspension, revocation and termination of such permits, and for the posting of an appropriate bond.

(6) Collect information and establish record keeping, monitoring and reporting requirements as necessary and appropriate to carry out the purposes of this Subchapter.

§ 506. Right of entry. Whenever it is necessary for the purposes of this Subchapter, the Board, or any member, agent or employee when duly authorized by the Board or by court order may, at reasonable times, enter any establishment or upon any property, public or private, for the purpose of obtaining information, making inspections, obtaining samples, inspecting or copying records required to be maintained by the provisions of this Subchapter and any regulations promulgated thereunder, or conducting surveys or investigations for the purpose of carrying out the purpose and policy of this Subchapter.

§ 507. Enforcement and implementation.

(1) Whenever the Board finds that discharge of waste is taking place or threatening to take place within a district that violates or will violate requirements prescribed by the Board or that the waste collection treatment, or disposal facilities of a discharger are approaching capacity, the Board shall require the discharger to submit for approval of the Board, with such modifications as it may deem reasonably necessary, a detailed time schedule of specific actions the discharger shall take in order to correct or prevent a violation of requirements.

(2) When the Board finds that a discharge of waste is taking place or threatening to take place within its jurisdiction in violation of requirements of discharge prohibi-

tions prescribed by the Board, the Board may issue an order to cease and desist and direct that those persons not complying with the requirements or discharge prohibitions a) comply forthwith, b) comply in accordance with a time schedule set by the Board, or c) in the event of a threatened violation, take appropriate remedial or preventive action. In the event of an existing or threatened violation of waste discharge requirements in the operation of a community system, cease and desist orders may restrict or prohibit the volume, type, or concentration of waste that might be added to such system by dischargers who did not discharge into the system prior to the issuance of the cease and desist order.

(3) Public hearing for consideration of issuance of a cease and desist order shall be conducted by the Board, adequate notice of which and opportunity to appear and be heard at which shall be afforded to all interested persons.

(4) Cease and desist orders of the Board shall become effective and final as to the said Board upon issuance thereof. Copies shall be served forthwith by registered mail upon the person being charged with the violation of the requirements and upon other affected persons who appeared at the hearing and requested a copy.

(5) Any person who discharges any pollutant into the water, air, or on the land, of the Trust Territory in violation of any discharge permit, requirement or other order issued by the Board or who intentionally or negligently causes or permits any pollutant to be deposited where it is discharged into the water, air or land of the Trust Territory shall, upon order of the Board, clean up such pollutant or abate the effects thereof. Upon failure of any person to comply with such cleanup or abatement order, the Attorney General or his designated representative, at the request of the Board, shall petition the Trial Division of the High

Court for that district for the issuance of an injunction, mandamus or other appropriate remedy, requiring such person to comply therewith.

(6) The provisions of this Section and of 63 TTC § 508 shall be interpreted consistently with the provisions of any law concerning administrative procedure which is or may hereafter become Trust Territory law. In the event of conflict between the two, the provisions of the latter shall supersede and be controlling.

§ 508. Review by High Court. Any person who may be adversely affected by the enforcement of any standard policy, regulation, permit or order of the Board and who alleges its invalidity, may file a petition for a declaratory judgment thereon addressed to the Trial Division of the High Court in the district where the petitioner is a resident. The Court shall declare the standard, policy, regulation, permit or order invalid if it finds that it exceeds the statutory authority of the Board, or is arbitrary and capricious. An appeal may be had from the decision of the Court to the Appellate Division of the High Court as provided by law.

§509. Fines and penalties.

(1) Any person who intentionally or negligently violates any cease and desist order hereafter issued, reissued, or amended by the Board shall be liable civilly in a sum not to exceed one thousand dollars ($1,000) for each day during which such violation occurs. Such sums shall be paid to the Treasurer of the Trust Territory for credit to the General Fund of the Congress of Micronesia.

(2) The Attorney General or his designated representative, upon request of the Board, shall petition the Trial Division of the High Court for a judgment assessing damages. In determining such damages, the court shall take

into consideration all relevant circumstances, including but not limited to, the extent of harm caused by the violation, the nature and persistence of the violation, the length of time over which the violation occurs and corrective action, if any, taken by the discharger.

(3) Any person who intentionally or negligently violates any cease and desist order hereafter issued, reissued, or amended by the Board shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not exceeding one thousand dollars ($1,000) or imprisonment not exceeding three (3) months, or both. For the purposes of this Subsection, each day during which such violation occurs shall be deemed to be a separate offense.

Appendix D

61 Stat. 397

JOINT RESOLUTION

Authorizing the President to approve the trusteeship agreement for the Territory of the Pacific Islands

Whereas the United States submitted to the Security Council of the United Nations for its approval in accordance with article 83 of the Charter of the United Nations a proposed trusteeship agreement for the Pacific islands formerly mandated to Japan under which the United States would be prepared to administer those islands under trusteeship in accordance with the Charter of the United Nations; and

Whereas the Security Council on April 2, 1947, approved unanimously the trusteeship agreement with amendments acceptable to the United States; and

Whereas the said agreement, having been approved by the Security Council, will come into force upon approval by the Government of the United States after due constitutional process: Therefore be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the President is hereby authorized to approve, on behalf of the United States, the trusteeship agreement between the United States of America and the Security Council of the United Nations for the former Japanese mandated islands (to be known as the Territory of the Pacific Islands) which was approved by the Security Council at the seat of the United Nations, Lake Success, Nassau County, New York, on April 2, 1947.

Approved July 18, 1947.

Appendix E

6 T.T.C. § 357

Unless and until the Congress of the United States provides for an appeal to a court created by Act of Congress, the decisions of the Appellate Division of the High Court shall be final.

Appendix F

DRAFT COMPACT OF FREE ASSOCIATION*

12 July 1974

Compact Between the People of Micronesia and the United States of America*

Agreed draft between Ambassador F. Haydn Williams, the President's Personal Representative for Micronesian Status Negotiations and Senator Lazarus Salii, Chairman, Joint Committee on Future Status, Congress of Micronesia.

This draft compact is the result of negotiations between the United States Government and the Congress of Micronesia opened in September 1969. Since that first session, seven formal rounds of negotiations have been held. The draft compact resulting from these negotiations was revised to its present form during recent informal meetings in Carmel, California and Guam between the heads of the U.S. Delegation, Ambassador F. Haydn Williams and Mr. James M. Wilson, Jr., and the Micronesian Delegation, Senator Lazarus Salii and Representative Ekpap Silk.

Following the Guam meeting, Senator Salii presented the draft agreement to the members of the Joint Committee on Future Status for review before sending it on to the full membership of the Congress of Micronesia. Suggested changes made by the Joint Committee on Future Status are included in this draft with recommended deletions from the original in brackets and recommended additions double underlined.[1] These proposed changes have not as yet been discussed with or approved by the United States Government.

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*Proposed change by JCFS but not yet discussed with or approved by USG.

1. This refers to the typewritten draft. As printed for purposes of this Brief in Opposition, recommended additions are set out in black-letter type.

Preamble

The United States of America and the People of Micronesia,

Recognizing that among the responsibilities of the Government of the United States as Administering Authority of the Trust Territory of the Pacific Islands is the obligation to promote the development of the inhabitants of that territory toward self-government or independence, and

Recognizing their common interest in developing a new political status for the people of Micronesia to replace the present trusteeship,

Desiring to establish and embody a relationship between the people of Micronesia and the United States which is and shall remain close and enduring, for so long as the continuation of that relationship remains consistent with the best interests of the people of Micronesia and of the United States.*

AGREE to establish through this Compact [of Free Association] a system of self-government appropriate to the particular circumstance of Micronesia and its people and in accordance with the freely expressed wishes of the people concerned. This Compact, approved by the people of Micronesia through their sovereign right of self-determination and by the Government of the United States, shall determine the respective rights and responsibilities of the Government of Micronesia and the Government of the United States.

TITLE I
Internal Affairs

Section 101

The people of Micronesia have the right to adopt their own constitution and form of government and to amend or

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*Proposed by JCFS but not yet discussed or approved by USG.

change any such constitution or form of government at any time, provided that the constitution and laws of Micronesia shall [remain consistent]* **not be consistent*** with the provisions of this Compact, and shall guarantee to the inhabitants of Micronesia their fundamental human rights and shall establish a governmental structure consistent with the principles of democracy.

Section 102

The duly constituted Government of Micronesia shall have full responsibility for and authority over **all matters which relate to*** the internal affairs of Micronesia.

Section 103

The people of Micronesia, in the exercise of their right of self-determination, may in the event of termination of this Compact freely choose their own future political status in accordance with Title XI of this Compact.

TITLE II
Foreign Affairs

Section 201

(a) The Government of the United States shall have full responsibility for and authority over all matters which relate to the foreign affairs of Micronesia.

(b) The Government of the United States and the Government of Micronesia shall consult at the request of either of them on matters of mutual concern relating to foreign affairs.

---

*Proposed by JCFS but not yet discussed or approved by USG.

(c) Without derogating from its powers under this Title the United States will respect the principle that the Government of Micronesia has full responsibility for and authority over the internal affairs of Micronesia.

Section 202

The authority of the United States under Section 201 includes the right to apply to Micronesia any appropriate treaty or other international agreement to which the United States is a party, provided, however, that the Government of the United States shall negotiate and conclude international treaties and agreements, or provisions thereof, which are intended to relate exclusively or predominantly to Micronesia **or which have a particularly pronounced effect on Micronesia*** only on the request and with the consent of the Government of Micronesia.

Section 203

In the exercise of its authority under Section 201, the Government of the United States undertakes the following responsibilities:

(a) The Government of the United States will extend consular assistance and diplomatic protection to citizens of Micronesia traveling outside of Micronesia and of the United States.

(b) The Government of the United States will give sympathetic consideration to applications by foreign countries for the establishment of Consulates in Micronesia, subject in each case to assurance from the Government of Micronesia that it would welcome the establishment of such a Consulate. The Government of the United States and the Government of Micronesia shall establish arrangements for

*Proposed by JCFS but not yet discussed or approved by USG.

the joint accreditation of foreign consular offices in Micronesia.

(c) The Government of the United States will facilitate Micronesian activity in the areas for which the Government of Micronesia may exercise responsibility under Annex A.

Section 204

In accordance with the terms of Annex A, the Government of Micronesia may undertake the activities specified therein.

TITLE III
Defense

Section 301

The Government of the United States shall have full responsibility for and authority over all matters which relate to defense in Micronesia.

Section 302

(a) The defense responsibility and authority of the United States Government provided for in Section 301 include:

(1) The defense of Micronesia, its people and territory, from attack or threats thereof;

(2) The right to prevent third parties from using the territory of Micronesia for military purposes; and

(3) The use of United States military bases which are established in Micronesia for the security of the United States, and to support its responsibilities for the maintenance of international peace and security.

(b) The Government of the United States may conduct the activities and operations within the lands, waters and airspace of Micronesia necessary for the exercise of its responsibility and authority under Section 302(a).

Section 303

(a) The Government of the United States shall have the exclusive right to establish, maintain and use military areas and facilities in Micronesia pursuant to paragraphs (b) and (c) of this section, the unencumbered right to protect all United States military facilities in Micronesia, and full freedom of use and access to all facilities and areas used for the conduct of military activities.

(b) The Government of Micronesia including its subdivisions shall assure the United States the rights and uses in the lands and waters specified in Annex B, which is an integral part of this Compact.

(c) If in the exercise of its authority and responsibilities under this Title the United States Government requires the use of areas within Micronesia in addition to those specified in Annex B, requests may be made of the Government of Micronesia to satisfy these requirements. The Government of Micronesia, including its subdivisions, shall establish suitable procedures to provide prompt response to any such request by the United States, and shall negotiate in good faith to achieve on reasonable terms an agreement for the use of such areas.

(d) The agreements for the lands and waters listed in Annex B shall conform with the provisions of this Compact and such agreements shall not contain any limitations on the use of such lands and waters which conflict with the basic authorities and responsibilities of the United States under Sections 301, 302, and 303 of this Title.

(e) The rights and uses specified in this Compact, and in agreements existing upon the entry into force of this Compact, shall at the option of the United States extend in full force and effect for the period of this Compact, unless a particular agreement provides for a longer term. Whenever agreements are extended, the terms of such agreements relating to payment shall continue, unless amended by mutual agreement.

Section 304

(a) No country other than the United States shall enjoy the right to conduct military activities or to establish and maintain military facilities and areas within the territory of Micronesia at any time, except as provided in paragraph (b) of this section.

(b) The United States Government may invite military units of other countries acting in conjunction with and under control of United States forces to utilize such military facilities and areas.

(c) The rights accorded the United States in paragraphs (a) and (b) above may not be assigned to any other country.

Section 305

The legal status of United States military personnel, of United States citizen civilian employees, and of their dependents, while present in Micronesia shall be established by mutual agreement. That jurisdictional agreement shall come into force simultaneously with this Compact.

Section 306

Citizens of Micronesia who are otherwise qualified in accordance with United States law shall be eligible to volunteer for service in the Armed Forces of the United

States, but shall not be subject to involuntary induction into military service unless they become permanent residents of the United States, as determined by United States law.

Section 307

The Government of the United States and the Government of Micronesia shall consult at any time requested by either of them on matters relating to defense. While not derogating from its full responsibility and authority in this area, the United States will to the extent possible without prejudice to the fullfillment of its defense responsibilities accommodate the expressed wishes of the Government of Micronesia.

TITLE IV

Financial Provisions

Section 401

The Government of the United States, in order to advance the economic and social welfare of the people of Micronesia and in recognition of the special relationship that has existed and continues to exist between the United States and Micronesia agrees to provide on a grant basis to the Government of Micronesia $35 million annually for the first five years of this Compact, $30 million annually for the next five years and $25 million annually for the next five years. These funds will be for use by the Government of Micronesia for programs and operations of that Government or any sub-division thereof as authorized by the Government of Micronesia.

Section 402

The Government of the United States shall make available to the Government of Micronesia $..... to cover compensation paid at fair market value for the use of land and water areas specified in Title III and Annex B.

Section 403

(a) The Government of the United States shall provide the Government of Micronesia, without compensation, the services of the U.S. Postal Service, U.S. Weather Service and U.S. Federal Aviation Administration. The level of such services in each district shall be that extended to that district on the date of the signature of this Compact. The Government of Micronesia shall make provision for the use of land necessary for such purposes at no cost to the United States Government.

(b) The Government of the United States and the Government of Micronesia from time to time may agree upon the extension of additional federal programs and services to Micronesia. Unless otherwise agreed, the cost of such additional programs and services will be charged against the overall assistance figure in Section 401.

(c) Neither the Government of Micronesia nor any subdivision thereof may impose taxes or other levies upon United States property or personnel, or the personal property of such personnel, present in Micronesia in connection with a service or program furnished by the United States under Section 403(a) of this Compact.

Section 404

(a) The Government of the United States will provide on a grant basis to a Government of Micronesia Capital Improvement Program Fund $12.5 million annually for the first five years of this Compact, $11 million annually for the next five years and $9.5 million annually for the next five years.

(b) The Government of the United States will also make available to the Government of Micronesia financial assistance on a loan basis for economic development projects in

an annual amount of $5 million for fifteen years subject to the terms of long-term low interest loan agreements between the Government of the United States and the Government of Micronesia. Of the $5 million annual loan, $2.5 million will be reserved for allocation to District Governments for small business loans at the district level; the remainder of the funds will be retained at the central government level for increasing the capital of the Micronesian Development Bank or other financial institutions involved in loan or equity financing of economic development projects of larger scale than those encompassed by the small business loan funds.

Section 405

The Government of Micronesia and the Government of the United States shall negotiate in good faith as to the amounts of economic assistance, as provided for in this Title, for periods subsequent to the first fifteen years after the effective date of this Compact. Pending agreement on new amounts of such assistance the United States will continue assistance to the Government of Micronesia under Sections 401, 403 and 404 subject to the gradually descending five year scales established in Sections 401 and 404(a) as adjusted pursuant to Section 406 of this Compact.

Section 406

(a) If in any year the funds to be provided for that year under Section 401 and 404 are not completely used, the unused balance shall remain available to the Government of Micronesia in addition to the funds to be provided in subsequent years.

(b) The funds provided under Sections 401 and 404(a) may be reallocated at any time by agreement between the

Government of the United States and the Government of Micronesia.

(c) The dollar amounts stipulated in Sections 401 and 404 for each year will be adjusted at the beginning of each fiscal year to reflect, as necessary, the change in purchasing power of U.S. currency as reflected by changes in the Guam Consumer Price Index, using U.S. fiscal year 1975 as the basing point for such adjustment.

(d) Sections 401, 403(a) and 404 will be reviewed by the Government of Micronesia and the Government of the United States at five year intervals from the effective date of this Compact **or more frequently upon the agreement of the two governments*** and adjusted as appropriate taking into account changes in economic conditions other than changes in the purchasing power of U.S. currency.

(e) The Government of Micronesia and the United States General Accounting Office shall determine procedures for the periodic general audit of all grants, loans, and funds expended for federal services and programs as stipulated in this Title.

TITLE V

Applicable Laws

Section 501

(a) The treaties and international agreements applicable to the Trust Territory of the Pacific Islands on the day preceding the effective date of this Compact shall be applicable to Micronesia, as well as the treaties and international agreements made applicable to Micronesia pursuant to Section 202 of this Compact.

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*Proposed by JCFS but not yet approved or discussed with USG.

(b) The statutory law of the United States applicable to the Trust Territory of the Pacific Islands on the day preceding the effective date of this Compact shall not be applicable to Micronesia except as otherwise provided in this Compact or in other agreements between the United States and Micronesia.

Section 502

(a) Treaties and international agreements applicable to Micronesia shall have the force of internal law in Micronesia without the need of implementing legislation if they are self-executing, regardless of whether such treaties or international agreements became or shall become applicable to Micronesia prior to or after the effective date of this Compact. A treaty or international agreement shall be presumed to be self-executing if the United States has not enacted implementing legislation for itself of its proclamation by the President of the United States.

(b) The Government of Micronesia will enact whatever domestic legislation is appropriate or required to enforce or implement those treaties and international agreements applicable to Micronesia pursuant to Section 501(a) of this Compact which are not self-executing. The implementing legislation enacted by the United States shall, however, have the force of internal law in Micronesia pending the enactment of the Micronesian legislation provided for in this subsection.

(c) The Government of Micronesia and its subdivisions will undertake to comply with and to enforce faithfully the treaties, international agreements and laws set forth in subsections (a) and (b) of this section.

Section 503

(a) The Government of Micronesia and its subdivisions will adopt and enforce such measures as may be necessary (1) to protect the personnel, property, installations, services, programs and official information maintained by the Government of the United States in Micronesia pursuant to this Compact, and (2) to ensure the effective implementation of the services and programs provided by the Government of the United States in Micronesia pursuant to this Compact. Such measures shall include appropriate and adequate civil and criminal remedies against:

1. Fraud against the Government of the United States.
2. Theft, embezzlement or destruction of property belonging to or in the custody of the Government of the United States; or the theft or unauthorized use of official information of the Government of the United States.
3. Interference with the operation of installations, programs or services maintained by the Government of the United States in Micronesia pursuant to this Compact.

(b) In the event the Government of Micronesia or its subdivisions do not adopt and enforce the measures required by sub-section (a) of this section, the related programs or services extended by the United States to Micronesia under Section 403 may then be withheld to the extent that the implementation or operation of such programs or services is thereby seriously and unreasonably impeded.

(c) The Government of the United States may, with the approval of the Government of Micronesia, provide investigative and enforcement services to insure compliance

with the laws and regulations relating to services and programs extended to Micronesia by the United States pursuant to this Compact.

Section 504

(a) Nothing in this Compact shall be construed as constituting a submission of either the Government of Micronesia or the Government of the United States to the jurisdiction of the courts of the other.

(b) The Court of Claims of either of the governments shall not have jurisdiction over any claim against either of the governments growing out of or dependent upon this Compact.

(c) The provisions of Section 1346(b) and of Chapter 171, Title 28, United States Code shall not be applicable to any claim arising in Micronesia.

Section 505

The Government of Micronesia and the Government of the United States will cooperate with each other in the pursuit, capture, imprisonment and delivery to appropriate authorities of fugitives from justice who have fled from the jurisdiction of one Government to that of the other. The precise terms of this mutual obligation shall be the subject of a later separate agreement between the Government of Micronesia and the Government of the United States.

Section 506

In the conduct of its activities in Micronesia the Government of the United States will endeavor to protect the surrounding environment from permanent or irreparable damage by adhering to standards no less restrictive than those established by United States law, except as otherwise may be agreed.

TITLE VI

Trade and Commerce

Section 601

The Government of Micronesia will have the authority to establish, change or eliminate import **and export*** duties and other regulations, including internal charges, laws and conditions governing the importation **and exportation*** of and commerce in goods from outside of Micronesia, except as otherwise provided in this Compact or as otherwise agreed.

Section 602

The United States and Micronesia will each accord to products of the other treatment no less favorable than that accorded like products of any foreign country with respect to customs duties and charges of a similar nature and with respect to laws and regulations relating to importation, exportation, taxation, sale, distribution, storage and use, except as otherwise agreed.

Section 603

(a) The Government of Micronesia shall have the power to regulate domestic air and maritime commerce between points each of which is within Micronesia to the extent that such regulation does not conflict with the treaties and international agreements applicable to Micronesia pursuant to Section 501(a) and the authority of the United States pursuant to Title II of this Compact and does not conflict with appropriate regulations of the Federal Aviation Agency.

(b) The Government of the United States shall obtain the consent of Micronesia before granting any new author-

*Proposed by JCFS but not yet discussed or approved by USG.

ity to any United States or foreign air carrier for international air commerce to or from Micronesia, except for aircraft operated for or under the control of the Government of the United States in connection with activities under Title III.

Section 604

The currency of the United States will continue to be the official legal tender for Micronesia until such time as the Government of Micronesia acts to institute its own currency. The terms and conditions of an appropriate currency transitional period shall be as mutually agreed.

TITLE VII
Citizenship and Nationality

Section 701

Every person who is a citizen of the Trust Territory of the Pacific Islands on the day preceding the effective date of this Compact, or who thereafter becomes a citizen of Micronesia [by birth,]* and who has not taken any affirmative step to preserve or acquire any foreign citizenship or nationality, shall be **accorded treatment as*** a national but not a citizen of the United States **for purposes of immigration and travel except as provided in Section 801(b)*** unless he is otherwise qualified for U.S. citizenship.

Section 702

Any person described in Section 701 who is a citizen or a national of a [foreign] country other than Micronesia **or the United States*** shall cease to be **accorded treatment as***

*Proposed by JCFS but not yet discussed or approved by USG.

a national of the United States within one year after the effective date of this Compact, or within six months after becoming 18 years of age, whichever comes later, unless he renounces that foreign citizenship or nationality.

TITLE VIII*
Immigration and Travel

Section 801

(a) The Government of Micronesia shall have the power to regulate immigration and entry of persons who are not citizens of Micronesia, except as provided in this Compact or as otherwise agreed.

(b) Citizens and nationals of the United States who are not citizens of Micronesia shall be free to enter and exit Micronesia but not to establish residence in Micronesia except with the consent of the Government of Micronesia. Citizens of Micronesia who are **accorded treatment as*** nationals of the United States shall be free to enter and exit the United States, **its territories and possessions,*** but not to establish residence in the territories or possessions of the United States except with the consent of the Government of the United States. Citizens of Micronesia who are not United States citizens [or nationals]* shall be accorded treatment as aliens for [these purposes]* the purpose of residence in United States territories and possessions.

(c) Micronesian provisions applicable to entry and exit to and from Micronesia by citizens and nationals of the United States and personnel sent to Micronesia pursuant to Section 403 of this Compact shall not be more restrictive than the comparable United States regulations governing those Micronesian citizens who are United States nationals.

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*Proposed by JCFS but not yet discussed or approved by USG.

TITLE IX

Representation and Consultation

Section 901

The Governments of the United States and of Micronesia agree to establish at the central seat of Government of Micronesia and in Washington, D.C., respectively, Resident Offices for the purposes of maintaining close and regular consultations on matters of mutual interest. The privileges and immunities respecting the Resident Offices shall be as set forth in Annex C.

TITLE X

Dispute Settlement

Section 1001

In the event of a dispute which relates to the interpretation or application of the provisions of this Compact, the Government of Micronesia and the Government of the United States shall negotiate in good faith in an effort to settle the dispute.

TITLE XI

Amendment and Change of Status

Section 1101

This Compact may be amended at any time by mutual consent of the Government of Micronesia and the Government of the United States.

Section 1102

(a) This Compact may be terminated at any time by mutual consent of the Government of Micronesia and the Government of the United States.

(b) After the expiration of the first fifteen years following its entry into force this Compact may also be terminated

unilaterally: (1) by the Government of the United States in accordance with its constitutional processes, such termination to be effective on a date not earlier than two years following receipt by the Government of Micronesia of notice of the Government of the United States' intention to terminate; or (2) by the Government of Micronesia by referring the issue to the people of Micronesia eligible to vote in any local or general election as defined in the Constitution of Micronesia. If two-thirds or more of such voters shall favor termination, including a two-thirds majority in each of at least two-thirds of the districts of Micronesia, the Government of Micronesia shall upon certification of the results of the vote on this issue give notice thereof to the Government of the United States and may take action to terminate the Compact effective on a date not earlier than two years following such notice, subject to the provisions of Section 1103. The action of the Government of Micronesia and the termination of the Compact shall not be applicable to any district of Micronesia in which a two-thirds majority of the voters have voted against termination.

(c) During the period of two years prior to the effective date of termination set forth under the provisions of Section 1102(b), any district in which a two-thirds majority of the voters has voted against termination shall be given the opportunity to negotiate with the United States with respect to that district's future political status. Upon the effective date of termination, if an agreement has not been concluded with respect to the future political status of any such district, all relevant provisions of this Compact shall continue in full force and effect with respect to that district subject to agreement of the United States and that district upon an appropriate adjustment in the level of financial aid to be provided to that district by the United States under Title IV.

Section 1103

(a) In the event either government gives notice of its intention to terminate this Compact pursuant to 1102(b) and before any termination may become effective, the United States' rights and uses in the lands and waters covered by then existing leases and the rights of denial set forth in Section 302 of this Compact shall be embodied in a mutual security agreement between the Government of Micronesia and the Government of the United States which shall enter into force simultaneously with the termination of this Compact.

(b) The parties shall negotiate in good faith to complete such mutual security agreement within two years of notice of intent to terminate this Compact under Section 1102(b) and the amounts of assistance provided under Sections 401, 403 and 404(a) and (b) shall not be further reduced in that two year period during which the provisions of Section 405 shall not apply.

TITLE XII

Approval of the Compact and Effective Date

Section 1201

(a) This Compact will be approved by Micronesia if a majority of at least 55% of those voting in a plebiscite to be held in Micronesia vote in favor of the Compact. All persons who would be eligible to vote in elections for the Congress of Micronesia, if such elections were held on the day the plebiscite is conducted, shall be eligible to vote in the plebiscite. In determining whether the required majority has voted for or against the Compact, only the affirmative and the negative votes shall be counted. The Compact shall not become effective, however, in any district in which ⅔ of those voting have voted against the Compact. Such dis-

trict shall be given an immediate opportunity to negotiate with the United States with respect to that district's future political status. The provisions of the Compact shall also be adjusted appropriately by agreement to be applicable only to the remaining districts of Micronesia.

(b) This Compact will be approved by the United States in accordance with its constitutional processes.

Section 1202

The President of the United States shall issue a proclamation announcing a date mutually acceptable to the Government of the United States and Micronesia at which the Compact will come into effect, when he finds:

1. That the Compact has been approved as provided for in Section 1201; and that

2. The people of Micronesia have adopted a Constitution pursuant to Section 101 of the Compact; and that

3. The Trusteeship Agreement between the United States and the Security Council of the United Nations for the former Japanese Mandated Islands has been terminated or will terminate on the day on which the Compact becomes effective.

ANNEX A

I. The Government of Micronesia may undertake the following activities pursuant to Section 204 of the Compact.

(a) The Government of Micronesia may seek associate or other appropriate membership for which Micronesia may be eligible in regional organizations, United Nations Specialized Agencies, or their subsidiary bodies, of which the United States is a member. The Government of the United States will sponsor such applications and will give sympathetic consideration to requests from the Government of Micronesia to apply for appropriate membership in any

other such organizations in which the United States is not a member. The Government of the United States will assist Micronesia in training personnel to participate in these organizations.

(b) The Government of Micronesia may negotiate and conclude in the name of Micronesia agreements of a cultural, educational, financial, scientific or technical nature that apply only to Micronesia with any international organization in which Micronesia is a member.

(c) The Government of Micronesia may establish temporary or permanent representation of Micronesian trade or other commercial interests in foreign countries, or accept foreign trade or commercial representation in Micronesia.

(d) The Government of Micronesia may request the Government of the United States to negotiate with foreign countries agreements of a commercial, cultural, educational, financial, scientific or technical nature which shall apply to Micronesia. The Government of the United States shall give sympathetic consideration to such requests.

II. In advance of undertaking any initiative pursuant to its discretion under Paragraph I of this Annex, the Government of Micronesia shall inform the Government of the United States of its proposed action and shall keep the Government of the United States fully informed of the progress and conduct of such activities.

III. The Government of the United States will promptly notify the Government of Micronesia if it appears that any proposal or activity of the Government of Micronesia pursuant to this Annex conflicts with the international commitments, responsibilities or policies of the Government of the United States or if it is likely to lead to such conflict. In accordance with Section 201(b) of this Compact the Gov-

ernment of the United States will consult as requested with the Government of Micronesia and will seek to consult before issuing a notification pursuant to this paragraph.

IV. Upon notification by the Government of the United States that an activity proposed or engaged in by the Government of Micronesia pursuant to this Annex conflicts or is likely to conflict with the international commitments, responsibilities or policies of the United States, the Government of Micronesia will refrain from or promptly terminate such activity.

ANNEX B

(a) Pursuant to Sections 302 and 303 of the Compact, the parties agree that the rights and uses of the United States in the lands and waters of Micronesia include:

(1) *Marshall Islands*

a) Within the Kwajalein Atoll, continuing rights for the use of those lands and waters associated with and currently controlled as part of the Kwajalein Missile Range, the land portion of which encompasses approximately 1,320 acres.

b) In the Bikini Atoll, continuing rights for use of 1.91 acres of Ourukaen and Eniman islets, and to use the pier, airfield and boat landing on Eneu Islands.

c) In the Eniwetok Atoll, retention of such use rights as may be negotiated upon return of the atoll.

(2) *Palau Islands*

a) Access and anchorage rights in Malakal harbor and adjacent waters, together with rights to acquire 40 acres for use within the Malakal harbor area, composed of submerged land to be filled and adjacent fast land.

b) Rights for the joint use of an airfield capable of supporting military jet aircraft (the proposed airfield at Garreru Island reef, or Babelthuap airfield/Airai site), the right to improve that airfield to meet military requirements and specifications and the right to develop an exclusive use area for aircraft parking, maintenance and operational support facilities.

c) On the island of Babelthuap the right to acquire 2,000 acres for exclusive use, along with the right for non-exclusive use of an adjacent area encompassing 30,000 acres, for intermittent ground force training and maneuvers.

[(3) Continuing rights to occasional or emergency use of all harbors, waters and airfields throughout Micronesia.]*

(3) Mariana Islands. (Inserted in this Subparagraph will be those lands and waters which have been agreed upon for use by the United States by the people of the Mariana Islands.)*

(4) Continuing rights to use of existing Coast Guard facilities.

(b) Agreements for lands and waters specified in paragraph (a) above are listed below. All agreements for the use of lands and waters concluded after the effective date of this Compact, and all modifications to any agreement under this Title, shall conform to the provisions of this Compact and shall be listed in this Annex.

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*Proposed by JCFS but not yet discussed with or approved by USG.

ANNEX C

(a) The Governments of Micronesia and of the United States, and the heads of their respective Resident Offices, shall be exempt from all national, regional or municipal dues and taxes in respect of the premises of their respective Resident Offices, whether owned or leased, other than such as represent payment for specific services rendered.

(b) Any person employed by the Government of Micronesia in its Resident Office who is neither a citizen nor a permanent resident of the United States, or any person employed by the Government of the United States in its Resident Office who is neither a citizen nor a permanent resident of Micronesia, shall be exempt from income and social security taxes levied under the laws of the host Government or any of its subdivisions with respect to income which is paid from funds provided by the employing Government or any agency thereof and upon which they are subject to the income or social security tax laws of the employing Government or any other Government and from taxes on the purchase, ownership, use or disposition or personal movable property (including automobiles) intended for their own use. Such employees and members of their families shall receive the same treatment with respect to the payment of customs and import and export duties on personal effects, equipment and supplies imported into the territory of the other Government for their own use, and with respect to other duties and fees, as is accorded by the Government of the United States to diplomatic personnel of foreign countries resident in the United States, subject only to the limitation that continuous customs free entry shall be limited to personnel, including their families, of comparable grade to the diplomatic personnel accorded continuous customs free entry by the United States.

(c) The premises of the Resident Offices including the residences of the Heads of the Resident Office shall be inviolable. Neither the agents of the Government of Micronesia nor those of the Government of the United States may enter the premises of the other Government's Resident Office except with the consent of the head of that Resident Office or someone authorized to act on his behalf.

(d) The premises of each Government's Resident Office, their furnishings and other property thereon and the means of transport of the Resident Office shall be immune from search, requisition, attachment or execution, except insofar as such immunity is expressly waived by the head of the Resident Office or someone authorized to act on his behalf.

(e) Any person employed by either the Government of Micronesia or the Government of the United States in its Resident Office who is also a citizen of the employing Government shall enjoy immunity from the criminal jurisdiction of the other Government or its subdivisions. This immunity shall extend to all members of the family of such a person forming a part of his household, if they are not citizens of the receiving Government.

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In the Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-622

THE PEOPLE OF SAIPAN, BY AND THROUGH HERMAN Q. GUERRERO, ET AL., PETITIONERS

v.

UNITED STATES DEPARTMENT OF THE INTERIOR, ET AL., AND CONTINENTAL AIRLINES, INC.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE FEDERAL RESPONDENTS IN OPPOSITION

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 28a-48a) is reported at 502 F.2d 90. The opinion of the district court (Pet. App. 1a-27a) is reported at 356 F. Supp. 645.

JURISDICTION

The judgment of the court of appeals was entered on July 16, 1974. A timely petition for rehearing was denied on September 3, 1974. The petition for a writ of certiorari was filed on November 20, 1974. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether a suit challenging, under the National Environmental Policy Act, 83 Stat. 852-854, 42 U.S.C. 4321-4335,

the legality of the execution of a lease on Saipan by the High Commissioner of the Trust Territory was properly dismissed by the district court.

STATEMENT

Saipan is part of the Trust Territory of the Pacific Islands (Micronesia), administered by the United States for the United Nations pursuant to a trusteeship agreement, 61 Stat. 3301, T.I.A.S. No. 1665, 8 U.N.T.S. 189.

In 1970, Continental Airlines applied to the Trust Territory government for permission to build a hotel on public land, and a lease was executed in 1972 (Pet. App. 29a). In late 1972, after construction of the hotel had begun,[1] several of the petitioners in the present action brought suit in the High Court of the Trust Territory to enjoin construction of the hotel. The High Court, while denying defendants' motions to dismiss on certain non-federal causes of action, held that the National Environmental Policy Act, 83 Stat. 852-854, 42 U.S.C. 4321-4335, did not apply to actions of the Trust Territory government, as plaintiffs had contended, since the Trust Territory government was not a "federal agency" within the meaning of the Act, 42 U.S.C. 4332 (Pet. App. 30a, n. 1).

Petitioners thereupon commenced this action in the United States District Court for the District of Hawaii, charging that execution of the lease violated the National Environmental Policy Act, and the fiduciary duties of the Department of the Interior.

The district court denied petitioners' motion for a temporary restraining order and granted respondents' motion

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[1]Construction of the hotel has been largely completed during the two-year pendency of this suit. Continental was, however, notified of the pendency of the suit soon after it commenced bulldozing the area in preparation for construction (Pet. App. 42a-43a).

to dismiss on the grounds that the Administrative Procedure Act, 5 U.S.C. 701(b)(1)(C), excluded from judicial review all governments created pursuant to the authority of Congress, such as the Trust Territory, that the government of the Trust Territory was not a federal agency subject to judicial review under either the Administrative Procedure Act or the National Environmental Policy Act, and that the trusteeship agreement did not vest plaintiffs with individual legal rights they could assert in the federal district court (Pet. App. 3a, 19a).

The court of appeals affirmed. While agreeing that neither the APA nor NEPA applied, the court held that the High Commissioner's action should be reviewed in light of the Trusteeship Agreement and local law, but that such review must be undertaken, at least initially, by the High Court of the Trust Territory (Pet. App. 39a-40a).

ARGUMENT

1. The decision by the Trust Territory government to grant the lease at issue was not a decision of an "* * * agenc[y] of the Federal Government* * *" to which the National Environmental Policy Act applies.

Although the Act does not contain a definition of "federal agency", the origin and functioning of the Trust Territory government, as well as analogous statutory schemes such as the Administrative Procedure Act and the Federal Tort Claims Act, 28 U.S.C. 2671-2680, indicate that internal decisions of the Trust Territory government, such as the one in the instant case, cannot be imputed to the United States government.

a. The Trust Territory government is not an agency of the federal government. It derives its authority ultimately from the United Nations, not the United States. The United States is merely the Administering Authority for the is-

land area, pursuant to its Trusteeship Agreement with the United Nations, 61 Stat. 3301. In entering into the Agreement, the United States made it clear that it did not consider its role of trustee to encompass sovereignty over the islands. 16 Department of State Bulletin 416, 417 (1947). This disavowal of sovereignty is in accordance with the accepted view of trust territories under international law: "[w]herever sovereignty does rest [with respect to the trust territories] it is not with the administering power." Sayre, *Legal Problems Arising from the United Nations Trusteeship System,* 42 Am. J. Int'l Law 263, 271 (1948).

In undertaking administration of the Trusteeship, Congress directed that "all executive, legislative, and judicial authority necessary for the civil administration of the Trust Territory shall * * * be vested in such person or persons and shall be exercised in such manner and through such agency or agencies as the President of the United States may direct or authorize." 48 U.S.C. 1681. Effective July 1, 1962, the President redelegated his authority for civil administration of the Territory to the Secretary of the Interior. Executive Order No. 11021, 27 Fed. Reg. 4409. Pursuant to these orders, the Secretary established in 1968 a Trust Territory Government which includes legislative, judicial, and executive branches, with the High Commissioner as chief executive of the Territory. Secretarial Order No. 2918, 34 Fed. Reg. 157. While the High Commissioner is appointed by the President with the advice and consent of the Senate, 48 U.S.C. 1681a, the Territory operates under its own legal code and inhabitants of the islands are citizens of the Territory, not of the United

States. See *Porter* v. *United States,* 496 F.2d 583, 588 (Ct. Cl.).[2]

Indeed, the Trust Territory has its own Environmental Quality Protection Act, enacted by the Congress of the Trust Territory. 63 T.T.C. (Supp. No. 1) 501-509.[3] The Act establishes an Environmental Protection Board, which is authorized to "control and prohibit pollution of air, land, and water in accordance with the law and regulations adopted and promulgated by it" (63 T.T.C. 505) and to enforce its orders by seeking injunctive relief, damages, or criminal penalties (63 T.T.C. 507-509).

b. Moreover, the federal government did not participate in the decision to grant the lease at issue in the instant case. Continental Airlines applied in 1970 to the Trust Territory government for permission to lease public land on which to build a hotel. Pursuant to the Trust Territory Code, 67 T.T.C. 53, the application was submitted to the Mariana Islands District Land Advisory Board for its consideration. Although the Board recommended against the plan, the District Administrator of the Marianas District recommended that the lease be approved (Pet. App.

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[2]A proposed Compact of Free Association, yet to be approved by Congress and by Trust Territory plebiscite, would grant the Government of Micronesia "full responsibility for and authority over all matters which relate to the internal affairs of Micronesia" (Section 102) while giving the United States responsibility over foreign affairs and defense (Sections 201 and 301). The proposed Compact would make the statutory law of the United States applicable to the islands only as provided in agreements between the United States and Micronesia (Section 501(b)). See Draft Compact of Free Association (July 12, 1974) (Br. of Resp. High Commissioner App. 13a-38a). At the time of the filing of this action, however, Secretarial Order No. 2918, *supra*, was still in full effect (Pet. App. 18a, n. 23).

[3]The law of the Trust Territory is codified in the Trust Territory Code (T.T.C.).

29a). The High Commissioner thereupon executed the lease on behalf of the Trust Territory government.

As the district court determined on the basis of affidavits submitted by the parties and testimony at the hearing on petitioners' Motion for a Temporary Restraining Order and at the hearing on respondents' Motion to Dismiss (Pet. App. 22a, n. 28):[4]

> [t]he lease approval was a "local" decision of the High Commissioner acting within the scope of his duties as chief executive of the Trust Territory Government. The officials of the Interior Department did not negotiate, counsel, advise or participate in the decision. Nor was the lease ever sent to the Department for approval or concurrence in any form.

c. As a further indication that internal decisions of the Trust Territory government cannot be deemed to be decisions of an "agenc[y] of the Federal Government" under the National Environmental Policy Act, analogous statutes, whose provisions apply to all federal agencies, have been deemed inapplicable to actions of the Trust Territory government.

The Administrative Procedure Act, for example, which provides for judicial review of "agency action", 5 U.S.C. 702, and defines an agency as "each authority of the Government of the United States", 5 U.S.C. 701(b)(1), expressly excludes from its coverage "the governments of the territories or possessions of the United States."

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[4]Petitioners contend that the district court improperly permitted introduction of evidence on a motion to dismiss without treating the motion as one for summary judgment under Rule 56(c), Fed. R. Civ. P. The error, if any, was harmless, since the court of appeals' conclusion that the National Environmental Policy Act is inapplicable to the decision to grant the lease did not turn on any disputed finding of fact.

5 U.S.C. 701(b)(1)(C). And, as indicated by the courts below, the legislative history of the Act plainly shows that Congress intended by this provision to exclude from judicial review all governments created pursuant to the authority of Congress (H. Rep. No. 1980, 79th Cong., 2d Sess., p. 16; 92 Cong. Rec. 2150), presumably including the government of the Trust Territory (Pet. App. 19a-20a, 32a).

Moreover, the Trust Territory has been deemed a "foreign country" under the Federal Tort Claims Act, 28 U.S.C. 2680(k) (*Callas* v. *United States*, 253 F.2d 838 (C.A. 2); see also *Brunell* v. *United States*, 77 F. Supp. 68 (S.D.N.Y.)), and a "foreign state" under the Immigration and Nationality Act, 8 U.S.C. 1101(a)(14) (*Application of Reyes*, 140 F. Supp. 130 (D. Ha.) *Aradanas* v. *Hogan*, 155 F. Supp. 546 (D. Ha.)).

In *Porter* v. *United States*, 496 F.2d 583 (Ct. Cl.), the court determined that the Trust Territory was not an "agency of the United States" for the purpose of asserting jurisdiction against the United States for an alleged breach of a contract negotiated by officials of the Trust Territory Government. As the court stated (*id.* at 588):

> While the United States has retained direct control in certain fields, such as foreign affairs, the daily administration of the islands has largely shifted into the hands of the local government. The Territory operates under its own comprehensive legal code.* * *
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> * * * [T]he [Trust] Territory government is not an agency of the United States for contract purposes.

See also *Harris* v. *Boreham*, 233 F.2d 110 (C.A. 3).

d. Petitioners contend that the High Commissioner was bound by the Trusteeship Agreement to act pursuant to the National Environmental Policy Act. The Trusteeship Agreement does not, however, require compliance with the Act. Rather, it provides that the United States "* * * may apply to the trust territory * * * such of the laws of the United States as it may deem appropriate to local conditions and requirements" (Art. 3, Pet. App. 56a). This provision requires specific federal legislation before any law of the United States becomes the law of the Trust Territory. No legislation specifically applies the National Environmental Policy Act to the Trust Territory.

Moreover, the Trust Territory Code provides that the Trust Territory shall give effect only to "such laws of the United States, as shall, *by their own force,* be in effect in the Trust Territory* * *." 1 T.T.C. 101 (emphasis supplied). Although Congress has specifically listed the Trust Territory within the coverage of a number of statutes, it did not list the Trust Territory within the coverage of the National Environmental Policy Act. See *People of Enewetak* v. *Laird,* 353 F. Supp. 811 (D. Ha.).

2. Petitioners also contend that the court of appeals erroneously committed to the High Court of the Trust Territory the question whether the action of the High Commissioner complied with the Trusteeship Agreement to "protect the inhabitants against the loss of their land and resources* * *" (Trusteeship Agreement, Art. 6). They argue that members of the High Court, appointed by the Department of Interior, should not be the final arbiters of the legality of Departmental action under federal law (Pet. 11).

However, neither federal law nor any actions of the Department of the Interior will be at issue before the High Court. In concluding that action of the High Commissioner

could be reviewed in light of the Trusteeship Agreement, the court of appeals did not suggest that the Agreement vested the citizens of the Trust Territory with rights against the United States which they could assert in federal court. Rather, the court concluded that the "[a]greement can be a source of rights enforceable by an individual litigant in a domestic court of law" (Pet. App. 36a) against his own government, upon which the Trusteeship Agreement is binding. "Surely, the judicial branch of the Trust Territory government has the authority to determine whether or not the action of its chief executive complies with a provision in its own constitutional document" (Pet. App. 38a). Thus the law to be applied by the High Court is in effect the constitutional law of the Trust Territory (see Parry, *The Legal Nature of Trusteeship Agreements,* 27 Brit. Year Book Int'l Law 164, 182-184 (1950)), and the actions to be scrutinized are those of the High Commissioner.

The High Court of the Trust Territory—the Territory's judicial authority, made expressly independent of the executive and legislative powers, Department of Interior Order 2918, *supra,* Part IV—is the appropriate forum for determining whether the High Commissioner violated the Trusteeship Agreement in granting the lease to Continental Airlines. Since the High Commissioner acted pursuant to local statutes in granting the lease, the High Court presumably will have an opportunity to test the validity of those statutes, on their face or as applied, under the Trusteeship Agreement.

Under the doctrine of abstention, it is appropriate that the construction of local laws be left to local courts. See *Chicago* v. *Fieldcrest Dairies,* 316 U.S. 168, 171-172. Abstention is particularly appropriate with respect to the rapidly evolving law of the Trust Territory. Article 6 of the Trusteeship Agreement requires the administering authority

to "foster the development of such political institutions as are suited to the trust territory and * * * promote the development of the inhabitants of the trust territory toward self-government* * *." Moreover, as has already been indicated, the proposed Compact of Free Association, soon to be voted upon by the people of the Trust Territory, would grant them full responsibility for and authority over their own internal affairs. See note 2, *supra*. Intrusion by the federal courts at this stage in the development of the Trust Territory's legal and political institutions would, we submit, be both unwise and unwarranted.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted.

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